SMA THE ARBITRATOR

SOCIETY OF MARITIME ARBITRATORS, INC.

Volume 52 / No. 1 March 2022

In this issue

President's Message

By: LeRoy Lambert, SMA President

The maritime industry is currently considering revisions to frequently used charter party forms, and the SMA is pleased to be participating in that process. John Weale, the chair of the committee revising the GENCON form, provided a report to us this past December. His remarks are included in this issue (p. 2). The joint committee of ASBA and BIMCO recently met in New York City to consider revisions to the ASBATANKVOY form. SMA members Soren Wolmar and Molly McCafferty are on the committee. We were honored to welcome the delegation at our March 9th luncheon at which committee chair Steven Harper of BW Offshore spoke about the committee's ongoing work.

Russia's invasion of Ukraine, the resulting sanctions, billion-dollar leases off of New York for wind farms, U.S. Justice Department investigations of companies in the container/liner trade, the resumption of "normalcy" after the Omicron variant worked its way through the world's population and, yet, more occurrences of multimillion dollar casualties: these are just some of the latest challenges facing our industry. The SMA is here to assist all stakeholders in resolving disputes which arise from such challenges in an orderly and cost-effective way. Read all about it in this issue!

Best regards,

LeRoy Lambert
President

A New GENCON: Transforming a Standard Charter for the Modern World*

By John Weale, Chair of the GENCON revision subcommittee of BIMCO**

We started work on revising GENCON in 2019. Initially, we expected this to be a fairly straightforward exercise. Not only was this a well-known charter, it had formed the basis for the dry cargo section of *Voyage Charters* (of Lloyds' Shipping Law Library).

But once we started work on the project, we came to realise just how much things have changed in the 25 years or so since GENCON was last up-dated. Shipowners now operate in an environment which is much more highly regulated, especially in terms of the environment and safety. A number of recent judgments had shown that our knowledge of the law was less complete than we had thought. And we recently saw the Supreme Court in London revisit the concept of seaworthiness. All this caused us to rethink things to a greater extent than we had expected.

In one sense, GENCON is a curious anomaly in that every other dry cargo charter in regular use comes from a cargo source. GENCON is also very old: much of the 1994 version goes back to the 1922 Uniform General Charter of the Documentary Council of the Baltic and White Sea Conference. Most shipping people seem to worship tradition; but a century later, it was surely time to think again.

Standing before you, I should perhaps also sound a note of caution, which is this: where we have a conflict between American and English law, BIMCO's charter forms have traditionally tended to favour the English approach, simply because of the volume of reported judgments and the related textbooks. But BIMCO also tries to avoid relying on implied "default" rules, because it is much easier in negotiating a charter to discuss and delete a specific clause than to start from scratch – especially when time is short. So, if you happen to identify any unspoken assumptions in our draft, I do hope you will point them out.

CONGENBILL

Before we get to GENCON itself, I'd like to mention our revised version of CONGENBILL. Although designed for use with GENCON, this bill of lading is often used in conjunction with other forms of charter—including, I have discovered, some of the oil trades—and so it has to be fit to stand alone. In general, the document has worked well, at least in terms of acceptance. But some courts have been rather resourceful in working round what we used to think was pretty clear. As an obvious example, in certain jurisdictions—not all of them Hamburg Rules countries—the arbitration clause has been read in a permissive sense, as opposed to exclusive. "Yes," say these foreign judges to their local claimants, "You are free to initiate arbitration; but you don't have to go there if you don't want to."

Here, we are proposing to strengthen CONGENBILL in three ways: (i) to incorporate in the document its own law and arbitration provision instead of just relying on potentially ambiguous incorporation by reference; (ii) to include, on the face of the bill itself, an express statement that the contract of carriage is subject to this law and arbitration clause; and (iii) to address the situation where, as so often happens, the face of the bill omits the date of the governing charter.

As you will see, our new clause states expressly that the law and arbitration clause of the charter is exclusive and limits court access to security, compliance and enforcement. The purpose here is to make the document self-sufficient and, in that sense, independent of the governing charter. It also, incidentally, allows us to have the GENCON charter incorporate verbatim BIMCO's new Law and Arbitration provision, to which I will come back shortly.

The Contract of Carriage: the Bill of Lading

For obvious reasons, our draft CONGENBILL retains BIMCO's Clause Paramount. As a crude paraphrase, I will say that the general purpose - present company always excepted - is to make the contract of carriage subject to the Hague-Visby Rules. And that is clearly reflected in the Bills of Lading clause of our GENCON draft, which provides that the bill of lading is to be presented in terms no less favourable to the carrier than those of this revised CONGENBILL.

Like its 1994 version, our draft of GENCON contains an indemnity from the Charterers where the bill of lading imposes terms more onerous than those assumed by the carrier under CONGENBILL.

The Contract OF Carriage Versus the Contract FOR Carriage

When you explain the distinction between the contract *of* carriage and a contract *for* carriage, most shipping people will say: "Of course, that's just common sense." Perhaps. But if that's so, it's rather surprising how little discussion you will find in the literature. I don't want to bore you with legal quotations; but I do think this one may be helpful. It comes from an English judgment of about 40 years ago.[1]

> The contract here is a contract in a bill of lading; it is a contract of carriage - that is to say, a species of a contract of bailment. It is not, as [the owners' counsel] at one stage argued, a mere contract for the carriage of goods. Charter-parties are typically contracts for the carriage of goods. They are executory. They are intended to give rise to bailments (not necessarily between the parties to the charter-party). They may include terms of an intended bailment, but they are not normally the contract of bailment itself. They cover other matters besides the bailor/bailee relationship.

Why should this matter? In our GENCON context, it matters because shipowners readily agree to make their charter subject to a Clause Paramount – quite often, they even request it. And this is not discouraged by the P&I Clubs, simply because their main focus here is on the Hague/Hague-Visby Rules as their minimum covenant for cover. As one of them has written: "[W]e often receive queries from our membership, predominantly owner members, as to whether a clause paramount should be included into the subject voyage or time charter. Our general answer is 'yes'."[2]

This is all very well in the context of liability for cargo claims, which is in any case not usually high on the agenda of the broker fixing a prompt ship on a Friday evening. But the fact remains: when you add a Clause Paramount to the 1994 and earlier versions of the GENCON charter, you might as well draw a thick black line through its unique Clause 2, the so-called Owners' Responsibility Clause. I will come back to this in a moment.

The Contract For Carriage: The Charter Party

Like GENCON 1994, the new version of the charter is based on FIOS terms—that is, it divides up between the Owners and the Charterers the obligations to be assumed by the carrier under the contract of carriage. And the problem for the draftsman is how to draw a clear and comprehensible line between the Charterers' responsibility for the safe loading and stowage of the cargo and, on the Owners' side, the duty to provide a seaworthy ship. And this situation is made more uncertain by the potential ambiguity of expressions such as "seaworthy," which may refer just to the ship itself as a seagoing entity or may also extend to wider concepts such as cargo-worthiness.

The handling of the cargo is covered in the Loading and Discharging clause of our GENCON draft, which states in plain terms that the Charterers shall handle the cargo at their risk, responsibility and expense – that is, 100% on their shoulders. But what if the stowage of the cargo endangers the ship itself? The example usually cited is critical instability, which the Charterers have no means of knowing, but which should be clear to the Master. Exactly how should we delineate this sort of risk and leave it with the Owners, where it logically belongs, but at the same time avoid drawing our exclusion too widely?

At time of writing, the sub-committee's discussions have narrowed down to two distinct types of solution. One would be to carve out the Charterers' responsibility where the Charterer can prove that the loss or damage results from the Master's breach of duty as to the safety of the ship. The alternative solution would be to take refuge in a well-tried expression and say that the handling of the cargo will be the Charterers' responsibility, but under the supervision of the Master.

The commercial attraction of "under the Master's supervision" is that it is familiar; and it would match the familiar wording of clause 8 of the NYPE form. The disadvantage is that the word "supervision" is itself rather ambiguous—especially here, when you are trying to identify the point where the Master has a duty to intervene. And in any case, if it happens that both parties know of the danger, whose failure to intervene should be the legal cause of the loss? This is not like a collision: in contract, it is all or nothing, and we have to allocate the risk and responsibility 100% one way or the other.

At time of writing, it seems likely that "under the supervision of the Master" will be our chosen solution, simply on grounds of familiarity and practice. But this is hardly a counsel of perfection.

The Owners' Obligation as to Seaworthiness

I have mentioned GENCON's famous Clause 2, its so-called "Owners' Responsibility Clause" - which might be better characterised as its non-responsibility clause. In essence, the clause says that, absent personal fault or privity, the Owners shall have no responsibility for loss or damage to cargo or delay in its delivery. In effect, it is a late 19th century bill of lading clause. I'm not sure when it first appeared, but it is already there in the 1922 version of GENCON, *i.e.,* before the Hague Rules.

Over the years, it has become apparent that, despite its obvious attractions, this old clause has serious limitations. Specifically, its second paragraph has been construed by the courts to refer only to the same sort of incident as covered by the first—that is, it is restricted to loss, damage or delay to the goods. And in result the clause really offers the Owners no defence against other liabilities, such as accidents on the approach voyage or claims for recovery of Charterers' payments in general average.

Because of this limited scope, the practice soon grew up of adding a Clause Paramount, making the charter subject to the Hague or Hague-Visby Rules; and this habit was probably reinforced by the general approval of the P&I Clubs, naturally focusing on their terms of entry. The results of this have not always been to the Owners' advantage.

The leading English case actually involved an American ship which was chartered in 1950 for as many voyages as it could perform within a defined period. Being rather old—it was delivered in 1922, fitted with a triple expansion engine—the ship lost time through breakdowns. The charter contained the standard USA Clause Paramount, and the English courts had to deal with three broad issues: Did COGSA 1936 govern the parties' rights under the charter? If so, was COGSA's effect limited to loaded voyages and/or to passages to or from ports in the USA? And was the expression "loss or damage" restricted to physical loss or damage to the cargo?[3]

In the end, 6 out of 9 judges found for the Charterers, but as the three dissenters sat in the House of Lords, the Owners did eventually win. It was, however, a close-run thing. As the judge had remarked, this clause was a "very slapdash way of doing things." And the Court of Appeal found that the provision contained so many contradictions, inconsistencies and incongruities that it was impossible to construe. A later judge put it more diplomatically: "The courts have not found it easy to make sense of the Hague Rules in the context of a charter-party since clearly these rules were not designed to be incorporated in such a contract."[4]

What About the Ballast Voyage?

One of the issues raised by the typical Clause Paramount relates to the voyage charter's ballast, or approach, voyage—for obvious reasons, the Hague-Visby Rules address only the cargo-carrying phase. So, is the approach passage to be governed by the initial "tight, staunch and strong" wording of charters such as Norgrain or Shellvoy? Or is this expression superseded by the due diligence obligation "before and at the beginning of the voyage" under the Hague-Visby Rules? It may be that the "right" answer in any given jurisdiction will depend on the facts and the context.

Our sub-committee has concluded that GENCON really needs a completely new version of Clause 2. Our draft sets up two "snapshot" obligations for the exercise of due diligence: (i) at commencement of loading, where the ship is to be properly manned and equipped, with holds fit and safe for receiving and carrying the cargo; and (ii) at commencement of the loaded voyage, where it is to be seaworthy and properly manned and supplied for the loaded voyage. To this has been added the continuing obligation of the Hague Rules to use due diligence properly to carry and care for the cargo.

Here, I should perhaps remind you: we are not dealing with the carrier's position under the contract of carriage, which is governed by terms of the bill of lading. We are dealing only with the allocation of liabilities arising under the bill of lading and dividing them up between the parties to the charter. The position of the cargo-owner under the bill of lading is not affected.

LAYTIME and DEMURRAGE

So much for the carriage of goods. If I may, I will now turn to laytime and demurrage.

Here, similar to the 1994 form—and indeed like most modern charters—our draft contains a

mongrel regime, an unhappy synthesis of port and berth terms. The ship is to tender its Notice of Readiness at the berth, but if the berth is not available then the ship is allowed to tender from the anchorage. To the delight of the lawyers, this hybrid creates all sorts of problems for the draftsman, but the approach is now so common that logical clarity has had to give way to industry practice.

We have tried to clarify some of the obvious areas of confusion. Although disputes in these areas may often be fairly insignificant in terms of money, they do tend to generate bad feeling at the operating level. Let me give you some examples. Can a valid notice be tendered prior to the opening of the laydays? If loading begins prior to the opening of the laydays, what time should count? Does a second notice prejudice a first if it does not say so? What if the Master honestly thinks the ship is ready when he tenders from the anchorage, but he is mistaken in believing so? What is a reasonable delay for providing cargo documents? Do the Charterers get credit for the laytime attached to dead-freight?

We have decided to have the new Gencon incorporate the current (2013) version of the BIMCO Laytime Definitions so far as they are consistent with the express terms of the charter, which we hope will help to avoid disputes. But where the BIMCO definition, for obvious reasons, follows a court decision that overturns standard practice and that decision has come in for commercial criticism, we have not hesitated to stick to the old interpretation.

So, in the light of the curious decision that "weather permitting" is a term of description, not exception,[5] we have preferred to adopt a different form of words which makes it clear that we mean to exclude only bad weather which actually affects the cargo operations of our own ship.

Another English decision has suggested that demurrage should be interrupted where the ship is not at the charterers' disposal—even where the charterers have no ability or intention to make use of it.[6] This part of that judgment has also come in for commercial criticism on the grounds that it is inconsistent with the concept of liquidated damages. Reflecting this criticism, we say that, where the ship is on demurrage, the concept of time lost should reflect that of the NYPE off-hire clause.

I mentioned the ship which has to tender its Notice of Readiness at the anchorage and suffers a berthing delay. When the ship eventually does get to the berth its holds are, it turns out, not ready for loading, but before the cleaning is finished the cancelling date arrives. To address this, our draft introduces a new provision: there, we say that the cancelling date is subject to extension by up to 96 hours after the time of failure.

Arbitration Clause

And finally, the law and arbitration clause of the charter itself.

In 2020, BIMCO issued a new, general purpose arbitration clause which offers the users the choice of the laws of England, the United States, Singapore and Hong Kong, with the addition of English law in Singapore or Hong Kong. In the printed form, you will only see the English version; but the others will appear automatically in the BIMCO software, depending on the choice made under the relevant box in Part 1. If this is not filled in, the default will be English law with London arbitration.

I could go on to discuss some of the other new clauses which we have added to our GENCON draft, mainly as a result of bad experience and/or changes in the world within which shipowners must operate. But I think most of these clauses will speak for themselves, so I will leave you to judge them as they appear in the draft.

* This article is based upon Mr. Weale's November 30, 2021, presentation, "A New Gencon: Transforming a Standard Charter for the Modern World" during an SMA virtual luncheon.

** After graduating from Oxford in 1966, John Weale joined Bibby Line in Liverpool. In 1979 Mr. Weale moved to Fednav in Montreal and remained with Fednav for the rest of his career (including 7 years in the 1980's in Greenwich with Navios of which Fednav first owned 50% and then 100%). Returning to Montreal in 1990, Mr. Weale assumed responsibility in 1996 for claims and disputes and, three years later, insurance. He retired in 2015.

Apart from various articles in "Lloyd's Maritime and Commercial Law Quarterly" and "The Journal of International Maritime Law," Mr. Weale published two books, one in 1982 on the application of programmable calculators to shipping problems and one on off-hire clauses.

1 *The Torenia* [1983] 2 Lloyd's Rep. 210
2 Standard Club web alert 22 Dec.2014
3 *Anglo-Saxon Petroleum v. Adamastos Shipping* [1957] 1 Lloyd's Rep. 79 (HC); [1957] 1 Lloyd's Rep. 271 (CA); [1958] 1 Lloyd's Rep. 73 (HL)

4 *The Standard Ardour* [1988] 2 Lloyd's Rep. 159
5 *Dow Chemical v. BP Tanker Co.* [1983] 1 Lloyd's Rep. 579
6 *Stolt Tankers v. Landmark Chemicals* [2002] 1 Lloyd's Rep. 78

The Nature of Demurrage: Will U.S. Tribunals Join in *The Eternal Bliss?**

By Luke Zadkovich, Partner (New York and London), Calum Cheyne, Senior Associate (London), Philip Vagin, Associate (New York and London) and Isabelle Winstanley, Research Assistant (London), of Zeiler Floyd Zadkovich

Demurrage disputes are the bread and butter of maritime practitioners on both sides of the Atlantic. This is an area of law which is very frequently arbitrated (and sometimes litigated)—which makes it all the more surprising that several basic questions about demurrage still remain without a clear answer.

One of these questions is the extent to which *all* losses of the shipowner during a period of delay are covered by the demurrage provision. If charterers fail to load the ship within agreed laytime (or maybe fail to load it at all) and owners sustain loss, when can charterers say that owners' recovery should be capped at the demurrage rate?

In an unusual and very important case called *The Eternal Bliss*[1], English courts are providing a definitive answer to this question (at least under English law). The dispute is likely to go up to the UK Supreme Court this year, with conflicting decisions handed down from the High Court and then the Court of Appeal to date. Shipping lawyers across the globe will no doubt continue to track it with interest.

This article summarizes the key takeaways (so far) from *The Eternal Bliss* and discusses how these may be relevant to the US law on demurrage, which is primarily developed through published SMA arbitral awards. The authors also briefly compare the English and U.S. approaches as to what demurrage is and what losses of shipowners demurrage is supposed to cover.

Facts

K Line ("Owners") and Priminds ("Charterers") entered into a voyage charterparty for the carriage of soybeans from Brazil to China on board the "Eternal Bliss." She arrived at the discharge port on time and gave notice of readiness. However, due to congestion and lack of storage space ashore, the vessel was unable to berth for 31 days.

Like most agricultural cargoes, soybeans are perishable.[2] When they were ultimately discharged, there appeared to be significant molding and caking throughout the stow in most of the cargo holds. It was agreed that damage occurred in consequence of the delay in discharge. By the time the soybeans were discharged, laytime had long expired and the vessel had gone on demurrage.

Cargo receivers then claimed against Owners for damage to the beans. Having settled that claim for a reasonable sum of USD 1.1 million, Owners commenced LMAA arbitration against Charterers to recover that amount from them, in addition to demurrage. In a peculiar twist, Owners alleged that Charterers' *only breach* was failure to discharge the cargo within the agreed laytime. This was therefore a "one breach, two losses" type of case.

In response, Charterers claimed that the demurrage rate in the charterparty was Owners' only and exclusive remedy for that one breach—in other words, Owners could not get any damages on top of demurrage. Using a special English procedure which allows a court to determine a question of law during an ongoing arbitration,[3] the parties applied to the High Court to decide whether the demurrage rate capped Owners' recovery.

The High Court Judgment

Mr. Justice Andrew Baker held that Charterers were liable for the settlement amount incurred by Owners and that the demurrage provision did not apply to this type of Owners' loss. Considering the definition of demurrage as "liquidated damages," he conducted a detailed examination of the relevant English cases and textbooks.

In a helpful grid, the judge summarized the English position on what demurrage covers as follows (with references to the English cases):

Can Owners Recover Beyond Demurrage?		Claim other than for 'detention of the vessel'?	
		Yes	**No**
Separate Breach?	**Yes**	**Recovery Possible** (*Reidar v Arcos* – even if extra breach caused by failure to complete within laytime)	**Recovery Not Possible** (*Inverkip SS v Bunge; Chandris v Isbrandtsen Moller Co Inc.)*
	No	**?** (The principal question arising in this case)	**Recovery Not Possible** (Obviously; *Inverkip SS v Bunge, a fortiori, Suisse Atlantique*)

He found that under English law, demurrage only liquidated owners' *loss of use of the ship* sustained due to the vessel's being delayed beyond laytime. It followed that demurrage did not compensate owners for other types of loss that could be caused by failure to discharge within laytime—such as cargo damage and an ensuing settlement with cargo claimants.[4] The judge's answer to the "principal question" in the table above was therefore "Recovery Possible."

The Court of Appeal Judgment

On appeal, the Court of Appeal reversed the judge's finding at first instance. Lord Justice Males, delivering the judgment, held that demurrage was liquidated damages for *all types of loss* caused by charterers' failure to discharge cargo within laytime. Therefore, if Owners can only show one breach (failure to load within laytime), then Owners could not recover the settlement amount on top of demurrage. If Owners wanted to recover damages over and above demurrage, they would have to prove a separate breach of the charterparty (e.g., failure to load the cargo at all, or load a complete cargo, or provide cargo documents).

The Court of Appeal reasoned that, typically, liquidated damages clauses cover all losses caused by the breach in question, so it would be unusual if commercial parties intended some losses arising from a breach to fall outside of the clause. This would undermine the certainty of liquidated damages clauses and lead to disputes as to which *type of loss* is covered.

In addition, shipowners generally maintain P&I insurance against liability for cargo claims. By contrast, charterers are usually not insured against liability for unliquidated damages resulting from failure to complete cargo operations within agreed laytime. To protect against this unlimited liability, charterers insert demurrage clauses which operate to cap their potential exposure. If demurrage clauses did not have this effect, the court noted that this would effectively transfer the risk of cargo liabilities for delays in loading / discharging from insured owners to uninsured charterers.

In short, the Court of Appeal preferred the approach favoring *commercial certainty*, which does not disturb existing risk allocation achieved by owners' P&I insurance. That said, it remains open to parties to state in their charterparties that demurrage covers only specific losses (e.g., only loss of use).

Nature of demurrage – the US position

Despite many similarities in other areas of maritime law, the English and U.S. views on what demurrage is and what losses it covers have been quite different.

For one, the position in England that demurrage is liquidated damages (axiomatically taken for granted in the Court of Appeal's judgment[5]) did not fully take root in the U.S. until quite recently. Since at least 1849,[6] U.S. law viewed demurrage variously as "extended freight" or "remuneration" for loss of the vessel's earnings caused by delays beyond laytime.[7] The apparent logic behind treating demurrage like freight was to make sure that payment of demurrage would not be subject to exceptions applicable to laytime.[8]

However, in charterparty disputes where charterers tried to use the demurrage rate "as a shield" to limit liability (as in *The Eternal Bliss*), this understanding of demurrage as freight did not have much of a role to play. It appears that the "demurrage is freight" approach has mostly been used in disputes *under bills of lading* where carriers tried to recover demurrage and shippers / consignees objected.[9] In modern cases, if demurrage is defined as "extended freight" or "remuneration," these

are mostly dicta or the issue arises under bills of lading, not charterparties.

The dominant approach in charterparty disputes nowadays is to treat demurrage as liquidated damages.[10] Interestingly, even general dictionaries reflect this shift—compare, for example, the 1990 edition of Black's Law Dictionary (defining demurrage as "remuneration")[11] with the 1999 edition (treating it as "liquidated damages")[12]. In this respect, the U.S. approach to demurrage is now similar to the English understanding, but this has not always been so.

Breaking the demurrage cap – the US position

When it comes to breaking (or avoiding) the demurrage rate as a limit on owners' recoverable losses, U.S. law uses a less certain and more factor-based approach than what has resulted from *The Eternal Bliss* judgments so far. It would probably take a grid much larger than the one used by Mr Justice Baker to summarize the current U.S. rules.

As a general proposition, under U.S. law owners may in certain circumstances disregard the demurrage rate and recover unliquidated detention damages, even if the type of owners' loss is mere loss of use of the vessel's earning capacity. This would be easier to do if owners can show a separate breach—i.e., in a "two-breach" case.

This is because the English *Inverkip* decision in the right-hand side of the grid above has not been consistently followed in the U.S. There is substantial SMA authority that where a separate breach of the charter is shown (e.g., failure to load any cargo or failure to provide cargo documents, such as a letter of credit) then owners may recover unliquidated detention even if their loss is just loss of use.[13]

For example, in *The An An* (2003),[14] after discussing *Inverkip* and several other English judgments, the panel noted:

> In the United States, the great majority of arbitration decisions do not accept the narrow view that the owner can not recover damages at large, for vessel's loss of use and have, specifically, awarded detention damages for "abnormal delays," "failure to open the required letter of credit timely," "delays associated with the issuance of the bills of lading," failure to move the previous cargo from the dock intended for loading," "failure to promptly nominate a loading/discharging berth," "charterer employing the vessel as a floating warehouse," etc.

Notably, this list mostly includes events which, under available SMA guidance,[15] would by themselves amount to a breach of charter. It is possible that "abnormal delays" or "delays associated with the issuance of the bills of lading" may, in certain cases, be held not to amount to a separate breach. As *The An An* suggests, even then owners may be able to break the demurrage cap and recover detention damages on top.

Whether owners may claim more than the demurrage rate would seem to depend on (1) the charterparty provisions, (2) the length of the delay, (3) whether the vessel was ultimately loaded/discharged within the allowed laytime, and (4) the nature of the charterer's alleged breach, for example, how deliberate it was—and no factor seems to control.[16]

It follows that when (1) the charterparty contains language indicating either that charterers have assumed a separate obligation (e.g. to ship cargo) or that the demurrage rate was not intended to cover all losses (which would be a rare wording), (2) the delay is substantial, (3) the vessel is not loaded / discharged within laytime (or at all), and (4) the charterers are somehow at fault for the delay, owners will have strong arguments to say unliquidated detention damages should be awarded.

The analysis above does not seem to depend on whether the case is a "one-breach" (although this would be rare) or "two breach" dispute and on whether owners suffer one or several types of loss. Showing a separate breach and a separate loss would increase owners' chances of breaking the demurrage cap, but under U.S. law as it stands this does not appear to be a requirement.

The Eternal Bliss – sailing across the pond?

The Eternal Bliss is a "one breach, two types of loss" dispute. We would expect discussion in the UK Supreme Court to be confined to this scenario, as other configurations ("two breach" or "one breach, one loss") are well-settled, at least in English law.

The U.S. approach to breaking the demurrage cap in general (regardless of the scenario) appears much less mechanic and more factor-based. That said, there seems to be no U.S. award or court

judgment directly on point in the "one breach, two losses" type of case—which is what *The Eternal Bliss* is about.

Given this lack of direct authority, the potential U.K. Supreme Court judgment (if it comes to pass) will very likely influence the outcome of any similar case on the U.S. side. SMA panels and U.S. federal courts regularly cite to English authorities in maritime disputes, even where the only applicable law is American.[17] Uniformity with English law has been a prominent theme in many areas of U.S. general maritime law, and *The Eternal Bliss* may help bridge the gap between the two approaches to the scope of demurrage clauses.

That said, given that the U.S. has historically shifted from considering demurrage as extended freight to more recently accepting demurrage as liquidated damages, we can see that the line of argument accepted by the first instance court in *The Eternal Bliss* may have some sway, when examined through the U.S. lens. This original tendency of equating demurrage with freight, rather than with liquidated damages, would logically mean that breach of laytime is less likely to be considered as liquidating losses not associated with loss of use of the ship (i.e.. freight-related).

If the U.K. Supreme Court does decide this case, and reverses the Court of Appeal, we can see that being persuasive in the U.S. and consistent with historical trends. Indeed, one does wonder whether some of the older, "demurrage as extended freight" U.S. cases may make for interesting comparison in argument before the U.K. Supreme Court. However, if the U.K. Supreme Court upholds the Court of Appeal, then there may still be room in the U.S. to focus on the factor-based approach to considering whether the demurrage cap applies in varying situations and reference that the nature of demurrage had its origins as extended freight, not as an all-encompassing liquidation of damages.

This case neatly highlights how the desire for uniformity and different historical origin in separate leading jurisdictions can give rise to tension in legal principle. Even in the very well-traversed, niche area of demurrage law.

* This article is based upon the February 9, 2022, live presentation of the Case by Case podcast presented during an SMA virtual luncheon by Luke Zadkovich and Calum Cheyne. You can find the podcast and Case by Case on Spotify and Apple Podcasts at:

Spotify:
https://open.spotify.com/show/4zGh3KZX1ZwLFFb-moETZY5

Apple Podcasts:
https://podcasts.apple.com/gb/podcast/case-by-case/id1569154701

1 The English High Court decision is cited as *K Line Pte Ltd v. Priminds Shipping (HK) Co Ltd* [2020] EWHC 2373 (Comm). The Court of Appeal judgment reversing it is [2021] EWCA Civ 1712.

2 We would note that the scenario in *The Eternal Bliss* where, as a result of delay in discharging, owners sustain several types of loss may happen in non-agricultural trades too—e.g., where a cargo of sulfur burns through the protective lime wash coating and damages the vessel or where a cargo of coal self-heats and explodes.

3 Arbitration Act 1996, s 45(1) ("the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties").

4 We would note that damage to the vessel itself caused by the cargo changing its qualities due to delay may also fall in this category.

5 *K Line Pte Ltd v. Priminds Shipping (HK) Co Ltd* [2021] EWCA Civ 1712, [1] ("Demurrage, as every shipping lawyer knows, is 'a sum agreed by the charterer to be paid as liquidated damages for delay beyond a stipulated or reasonable time for loading or unloading, generally referred to as the laydays or laytime' ").

6 *Sprague v. West,* 22 F. Cas. 970, 972 (S.D.N.Y. 1849) ("Demurrage is only an extended freight or reward to the vessel in compensation of the earnings she is improperly caused to lose"); *Davis v. Wallace,* 7 F. Cas. 182, 185 (C.C.D. Mass. 1868) ("Demurrage is the sum fixed by the contract of affreightment as a remuneration to the ship-owner for the detention of the ship beyond the laydays allowed for loading or unloading the vessel").

7 See principally *Pennsylvania R. Co. v. Moore-McCormack Lines, Inc.,* 370 F.2d 430, 432 (2d Cir. 1966) ("The general rule is that demurrage is extended freight and, where there has been an excess of lay days over those stipulated, the consignee is liable to pay demurrage for those excess days regardless of what brought about the delay [subject to limited exceptions]").

8 See, e.g., *Yone Suzuki v. Cent. Argentine Ry.*, 27 F.2d 795, 804 (2d Cir. 1928) ("Demurrage is extended freight, and the strike exception, like that of restraint of princes, does not stop it from running. ... There is an absolute contract to pay demurrage, and payment is not prevented by strikes"). See also *Pennsylvania R. Co. v. Moore-McCormack Lines, Inc.,* 370 F.2d 430, 432 (2d Cir. 1966).

9 See, e.g., *Safmarine v. Columbia Container Lines (USA), Inc.,* 2010 WL 7134001, at *3 (E.D.N.Y. Dec. 15, 2010) ("The general rule is that shippers or consignees are liable for demurrage. ... Demurrage charges are regarded as an extension of the ocean freight charges for which the shipper is liable").

10 See, e.g., *The Sea Royal,* SMA 2279, 1986 WL 1179634, at *3 ("The demurrage amount specified in the charterparty represents liquidated damages to be paid by the charterer for his breach of charter in retaining the ship beyond the laydays. Although for limited purposes the expression has been used, demurrage is not, in modern charterparties, an 'extended freight'"); *Eitzen Chem. (Singapore) PTE, Ltd. v. Carib Petroleum,* 749 F. App'x 765, 766 (11th Cir. 2018) ("Demurrage is an agreed upon amount of liquidated damages for any delays beyond the anticipated amount of time specified in the contract for loading and unloading the cargo").

11 *Transatlantic Shiffahrtskontor GmbH v. Shanghai Foreign Trade Corp.,* 204 F.3d 384, 386 (2d Cir. 2000) ("'Demurrage' is remuneration of the shipowner for the detention of its vessel beyond the number of days allowed by the charter-party. See Black's Law Dictionary 432 (6th ed. 1990)").

12 *Linea Navira De Cabotaje, C.A. v. Mar Caribe De Navegacion, C.A.,* 169 F. Supp. 2d 1341, 1344 (M.D. Fla. 2001) ("Demurrage is liquidated damages to a shipowner for the charterer's failure to load or unload cargo within certain time parameters—essentially damages for delay. BLACK'S LAW DICTIONARY 444 (7th ed.1999)").

13 *Voyage Charters* (2014), paras. 16A.14, 16A.16 and SMA awards cited therein.

14 SMA 3792, 2003 WL 25794965.

15 See, e.g., the awards cited in *The An An* itself, at *7-10.

16 *Voyage Charters* (2014), para. 16A.18.

17 See, e.g., *The Seadancer,* SMA 4131 (2011) ("the relevant law to be considered with respect to the loss of profits claim is U.S. law and SMA precedent. However, we should note it is accepted that in maritime matters, conformity with English law is a desired objective rather than an exception. The U.S. Court of Appeals for the Second Circuit has taken the position that ... in matters of commercial law our decisions should conform to English decisions, in the absence of some rule of public policy which would forbid, *Senator Linie GMBH & Co. KG v. Sunway Line, Inc.,* 291 F. 3d 145, 170 (2d Cir. 2002)").

The SMA ... in the Courts

By Louis Epstein, SMA Member and Co-editor of The Arbitrator

The following are three recent cases in New York courts arising out of arbitrations under the SMA Rules or in which SMA members served as arbitrators.

1. Kondot S.A. v. Duron LLC

In *Kondot S.A. v. Duron* LLC, No. 21 CIV. 3744 (ER), 2022 WL 523902 (S.D.N.Y. Feb. 22, 2022), the United States District Court for the Southern District of New York per Ramos J. upheld the third of three partial final awards issued by the panel in an arbitration under SMA Rules arising out of a charterparty for the carriage of a cargo of wheat. The arbitration was commenced by Kondot, the owner, on an emergency basis after the intended sale in Peru of the cargo by Duron, the charterer, fell apart, Duron failed to arrange a substitute sale, and the perishable cargo had been on board the vessel, which was anchored near Balboa, for several weeks.[1]

Kondot moved to confirm the third Partial Final Award[2] in which the Panel held that Kondot was entitled to recover $2,078,382.50 in damages, attorneys' fees and costs. Duron, which had not challenged the first two partial final awards, moved to vacate the third partial final award on three grounds. Although the grounds asserted were not among the grounds for vacatur specified in Section 10 of the Federal Arbitration Act, the court considered whether they were grounds for refusal of enforcement under Article V of the New York Convention:

- First, Duron contended that the parties had not agreed to any expedited procedure, that the SMA Rules did not provide for any such procedure and, therefore, that conducting the arbitration on an emergency basis "was not in accordance with the agreement of the parties." The court rejected Duron's contention, holding that "the arbitrators had good reason to grant Kondot's emergency application" and that it found "unconvincing Duron's argument that the arbitrators' reliance on the SMA guidebook, as well as its adherence to 'well-established' SMA prac-

tice, is counter to the SMA Rules (which, while silent on emergency arbitration, do not prohibit it)." 2022 WL 523902 at *8.

- Second, Duron contended that the court should refuse to recognize the award under Article V(1)(b) of the Convention because it "was not given proper notice ... or was otherwise unable to present [its] case." The court rejected this contention holding: "It is clear from the partial final awards—as well as from Duron's papers—that Duron had ample opportunity to be heard regarding all the issues in the arbitration and that it took full advantage of that opportunity." *Id*.
- Finally, Duron opposed confirmation under Article V(2)(b) of the Convention which provides that a court may refuse to recognize an award if "recognition or enforcement of the award would be contrary to the public policy" of the country in which enforcement or recognition is sought. Duron argued that an addendum to the Charterparty was procured by duress and that contracts entered into under duress contravened public policy. The court also rejected this contention, noting that (a) the duress question had been thoroughly argued before and rejected by the arbitrators whose decision was entitled to deference; and (b) Duron had in any event waived the duress issue by failing to timely raise it. *Id*.

2. Commodities & Minerals Enterpr v. CVG Ferrominera Orinoco, C.A.

On February 1, 2022, oral argument was held in the Second Circuit in *Commodities & Minerals Enterpr v. CVG Ferrominera Orinoco, C.A.*, No. 20-4248, an appeal from the confirmation by the federal district court of an SMA award. The SMA Award in question was issued in *Arbitration Between Commodities & Minerals Enterprise Ltd. ("CME") v. CVG Ferrominera Orinoco, C.A.* ("CVG") ("MV General Piar"), SMA No. 4358 (Siciliano, Wentz, Kimball) (2018), subsequently corrected in SMA No. 4363 (2019), awarding to the claimant CME $12,655,594.36 in damages against the respondent CVG. On December 10, 2020, the United States District Court for the Southern District of New York issued an order granting CME's petition to confirm the Award. *Commodities & Mins. Enter., Ltd. v. CVG Ferrominera Orinoco, C.A.,* No. 1:19-CV-11654-ALC, 2020 WL 7261111 (S.D.N.Y. Dec. 10, 2020). CVG appealed to the Second Circuit on various grounds.

The focus of the oral argument (a recording of which may be found at this link https://www.courtlistener.com/audio/79695/commodities-minerals-enterpr-v-cvg-ferrominera-orinoco-ca/) was the alleged failure of CME to serve the petition to confirm the award on CVG, a Venezuelan government owned enterprise, in accordance with the requirements of the Foreign Sovereign Immunities Act ("FSIA"), specifically 28 USC § 1608(a) (2) which provides:

> **(a)** Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:
>
> * * *
>
> **(2)** if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents;

No summons was served with the petition to confirm. According to CVG, the failure to serve a summons with the petition meant that the court below lacked jurisdiction to confirm the award and, therefore, that the decision below must be reversed. CME contended that although the statute required service of a summons with a complaint, there was no requirement to serve a summons with a petition to confirm an arbitration award. As of this writing, the appeal had not yet been decided.

3. Preble-Rish Haiti, S.A. v. Republic of Haiti,

In *Preble-Rish Haiti, S.A. v. Republic of Haiti,* No. 21-CV-6704 (PKC), 2022 WL 229701 (S.D.N.Y. Jan. 26, 2022), the United States District Court for the Southern District of New York granted the petition of the claimant, PRH, to confirm a Partial Final Award granting PRH's petition for a pre-award security and directing the deposit of $23,043,429.79 into an escrow account as security for claims arising out of the alleged breach by the Respondents of contracts for the supply of various petroleum products.[3] The Respondents contended that enforcement of the Partial Final Award was precluded on five grounds:

- First, the Respondents asserted that the arbitration provision was illegal under Haitian law. Judge Castel rejected this contention, observing that the exact same argument had already been raised and decided by the New York State Supreme Court in a September 27, 2021, decision denying Respondents' motion under CPLR 7503 to stay the arbitration[4] and that, under the doctrine of *res judicata,* the state court judgment on that issue precluded the Respondents from relitigating it on the petition to confirm. 2022 WL 229701 at *6.
- Second, the respondents contended that "there has been a lack of due process in the arbitration, given that PRH served defective notice of the arbitration and then leveraged that lack of notice to choose all three arbitrators." Judge Castel rejected this contention on *res judicata* grounds as the same issues were raised or could have been raised in the state court proceeding. Id. at *7.
- Third, the Respondents alleged that they were "otherwise unable to present [their] case" citing New York Convention art. V(1)(b), and noting that "PRH and its arbitrators held a purported security hearing in the middle of a COVID-19 surge in Haiti, less than three weeks after the assassination of Haiti's President, and despite BMPAD's reasonable request that any hearing be stayed until ... BMPAD's counsel could communicate with its client and witnesses." Judge Castel also rejected this contention holding:

  > While the COVID-19 surge in Haiti and the political turmoil surrounding the assassination of Haiti's president are certainly significant and relevant factors to consider, based on the available record, the Court concludes that in the context of confirming an arbitration award under the New York Convention, BMPAD did have an opportunity to present its case at the arbitration hearing conducted in New York, but it declined to do so. *Id.*

  The court noted the extensive efforts that the panel made to afford the Respondents an opportunity to present their case, including adjourning the scheduled hearing, repeatedly suggesting to the Respondents that they participate in the hearing under a reservation of rights, and delaying the start of a second day of hearings in the hope that the Respondents would change their minds and participate. *Id.*
- Fourth, the Respondents alleged that there was "an improper arbitration panel here" because "there is unquestionably the appearance of a conflict of interest when two of the arbitrators are former partners of PRH's counsel at Blank Rome LLP[5], and the other arbitrator is directly associated with PRH's counsel via membership in an organization together." The court rejected the Respondents' contention, holding that: the arbitrators were selected in accordance with the terms of the arbitration agreement, there had been no showing of evident partiality, and there was "nothing untoward raised by the vaguely worded claim that at some unknown point in time one arbitrator was 'formerly a partner at the law firm of PRH's Counsel'" or "anything necessarily sinister that one or more arbitrators 'apparently shares membership with PRH's counsel in a small association' that is unnamed. None of these circumstances have been demonstrated to be evident partiality or corruption on the part of the arbitrators." *Id.* at *8.

Finally, the court also rejected Respondents' argument that enforcement should be refused under the public policy exception in Article V(2)(b) of the New York Convention, stating: "The Court concludes that enforcement of the Partial Final Award here would not violate our most basic notions of morality and justice, and that enforcement would actually further our country's 'strong public policy in favor of international arbitration'." *Id.*[6]

1 The first partial final award granted the request of the Owner, Kondot, for a declaration that the charterer, Duron, had repudiated the charterparty and that Kondot was entitled to accept Duron's repudiation and terminate the Charter. *Arbitration Between Kondot S.A and Duron LLC (M/V Hanze Gendt)* (SMA No. 4395) (Epstein, Gilmartin, Martowski) (2020). The second partial final award (SMA No 4419) (2021) ordered Duron to provide pre-award security for Kondot's claim in the amount of $2,000,000.

2 SMA No. 4426 (2021)

3 Although the arbitration clause did not incorporate SMA Rules, the three arbitrators, Robert Shaw, LeRoy Lambert and Louis Epstein, were all SMA members.

4 *Republic of Haiti v. Preble Rish Haiti S.A.*, Index No. 6572372020, Sup.Ct.N.Y.Co. (Sept. 27, 2021). The Respondents' appeal from the denial of a stay is pending in the

First Department.

5 In fact, this assertion was incorrect. None of the arbitrators had ever been a partner at Blank Rome with PRH's counsel.

6 On February 28, 2022, the Respondents filed a notice of appeal of the district court's decision to the Second Circuit

Focus on SMA Members

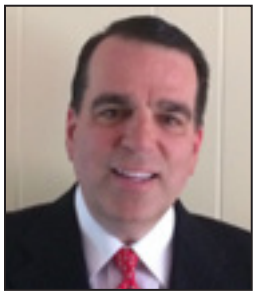
SMA members have varied backgrounds and work experiences making for a membership roster with depth and breadth which we highlight in this issue by providing brief bios of the chairs of three SMA committees.

Müge Anber-Kontakis chairs the SMA's Friends and Supporters committee. Müge is a graduate of Marmara University Law School, Istanbul, with a Masters of International Transportation Management from S.U.N.Y. Maritime College and an LL.M. from Hofstra University School of Law. As V.P., Global FD&D Manager & Counsel at Shipowners Claims Bureau, Inc. (managers of the American P&I Club), Müge oversees handling of FD&D matters worldwide and handles a variety of complex P&I legal cases and arbitrations/mediations arising from maritime contracts and disputes. Müge completed the NYC Bar Association's Advanced Commercial Mediation Training and is a member of the US Maritime Law Association, WISTA USA and IBA (since 2018 an officer of the IBA's Maritime & Transport Law Committee).

Müge described the role of her committee for us: *"The F&S committee identifies support sources for the SMA and reaches out to the maritime industry to obtain support/funding for the SMA and ensures that the funds are used efficiently to promote SMA arbitration/mediation which also links to promoting maritime business in the New York metro area."*

Mike Hand served as the Treasurer of the SMA for 8 years and now chairs the SMA's Audit Committee. Mike worked for more than 25 years as a shipbroker for dry cargo brokerage firms (E. Molstad & Co., M.I.D. Ship Marine and Heath Chartering) and dry cargo and tank vessel Owners (Lexmar Corp. and Van Ommeren Shipping USA). Mike is familiar with all aspects of vessel operations and ship management including voyage and time chartering of liquid and dry cargo vessels. For the last 22 years, Mike had special responsibility for laytime and demurrage issues involving the transport of chemicals, gas, clean petroleum products and dry bulk cargo, having retired in 2018 from gas and chemical brokers Quincannon Associates Inc. Mike, a member of ASBA and the Connecticut Maritime Association, is a consultant for ICC Chemical Corp for their laytime and demurrage issues.

In Mike's words: *"The Audit committee oversees the SMA accountants' procedures to ensure that the SMA is in compliance with all Federal and State requirements so that the SMA can maintain its non-profit 501(c)(3) tax exempt status."*



Rob Milana chairs the SMA's Mediation Committee. Rob works with Travelers Insurance Co. and has extensive experience handling all types of marine disputes including P&I, hull, liability, recreational marine, cargo and charter party with particular expertise in personal injury Jones Act matters and in mediation strategy and tactics. A graduate of SUNY Maritime College at Fort Schuyler (BE), Rob sailed as Third Engineer with MSC (and is President of Ironwood Management, LLC, a marine consulting firm). Rob practiced law for nearly 15 years (Kirlin, Campbell & Keating (partner) and London Fischer, LLP (partner)) which included appearing before SMA panels. Before joining Travelers in 2015 Rob worked for AIG for 10 years. Rob has experience as a NYSE arbitrator.

As to the goal of the Mediation committee, Rob commented: *"The goal of the mediation committee is to promote the use of mediation in the maritime community and the selection of SMA mediators."*

Spotlight on the SMA

SMA at the CMA Shipping Conference:

The SMA was a Bronze & Breakfast sponsor at the CMA Shipping Conference held at the Hilton Hotel, Stamford, Ct. on March 29-31, 2022. SMA Vice-President **Bob Meehan** participated on the panel discussing "Freight Markets: Past, Present and Future" moderated by Michael Lund, Deputy Secretary General, BIMCO. SMA member **Molly McCafferty** participated in the "It's All Legal" session, addressing "Social Inflation and the Rising Cost of Personal Injury Claims in the United States."

SMA at MLA Arbitration & ADR February Coffee Break:

At the Feb. 18th Zoom "Coffee Break" (organized monthly by the MLA ADR Committee), **Molly McCafferty,** SMA Member and Sr. Vice President, Claims Director, Shipowners Claims Bureau, Inc., and Anthony Pruzinsky, Counsel, Hill Rivkins LLP, joined Casey O'Brien, MLA Arbitration & ADR Committee Secretary, Corporate Counsel, Amazon, for a discussion on the status of discovery in arbitration, including comments and observations from their perspectives as arbitrator and practitioner.

SMA at the MLA 2022 Spring Meeting:

SMA President **LeRoy Lambert** will be presenting to the MLA "In House Counsel" Committee at the MLA's spring meeting https://mlaus.org/in-person-mla-2022-spring-nyc-meeting/ .

SMA at the GNOBFA Seminar:

SMA member **Rob Milana** will participate on a Panel addressing the pros and cons of mediation at the GNOBFA (The Greater New Orleans Barge Fleeting Association) 38th River and Marine Industry Seminar to be held at the InterContinental Hotel in New Orleans on April 27-29, 2022. For more information, please visit http://www.gnobfa.com/seminar.htm.

Return of In-Person SMA Monthly Luncheons:

The SMA was able to hold its traditional holiday luncheon in person on December 8, 2021. However, due to the surge of Covid-19 cases in January and February, the SMA returned to its "Bring Your Own Lunch" Zoom presentation format on February 9, 2022, featuring **Luke Zadkovich** and **Calum Cheyne** of Zeiler Floyd Zadkovich's "Case by Case" podcast which discussed the topic: "What is Demurrage? Will US Tribunals Share in *The Eternal Bliss?*"

The SMA invited them to write an article on this topic for The Arbitrator, which appears in this issue at p. 6.

On March 9, 2022, the SMA was able to return to the in-person format for its monthly luncheon, which featured **Stephen Harper,** Head of Legal – Shipping, BW Group, Singapore, and Chair of the ASBATANKVOY Revision Committee. Mr. Harper spoke on the topic "Towards a New ASBATANKVOY - Revising One of the Tanker Sector's Favorite Forms." Other members of the ASBATANKVOY Revision Committee, including SMA Members **Molly McCafferty** and **Soren Wolmar,** were also present at the luncheon.

The next scheduled luncheon will take place on **April 13, 2022,** and will offer a presentation by Mike Leahy, Managing Director, and Claudia Botero-Gotz, Senior Lawyer, of Gard (North America), Inc. on "Container Ship Fires and Cargo Misdeclarations."

"Maritime Arbitration in New York":

The SMA offered its popular, comprehensive seminar "Maritime Arbitration in New York" as an online Zoom program in March 2022. The seminar provided 12 hours of CLE credits over four consecutive weekly three-hour live Zoom video sessions: March 4, March 11, March 18 and March 25, 2022.

In Closing

Many thanks to every person who contributed to this issue of **The Arbitrator.**

If you have articles and ideas to contribute to future editions, please let us know! We welcome your feedback to help us with ensuring that **The Arbitrator** provides timely and relevant articles and information to the maritime arbitration community in New York and around the world. And thanks to Tony Siciliano and to all readers who keep our membership abreast of maritime news items and developments.

Please contact us with your thoughts and suggestions at: dick.corwin@icloud.com; sandra.gluck@gmail.com; or louis.epstein@trammo.com.

THE ARBITRATOR

Dick Corwin, Co-Editor
dick.corwin@icloud.com

Louis Epstein, Co-Editor
louis.epstein@trammo.com

Sandra Gluck, Co-Editor
sandra.gluck@gmail.com

Society of Maritime Arbitrators, Inc.
127 West 30th Street, 9th Floor
New York, NY 10001
(212) 344-2400 • Fax: (212) 344-2402

E-mail: info@smany.org
Website: https://www.smany.org

THE ARBITRATOR (ISSN# 1946-1208) is issued 3-4 times a year; published by The Society of Maritime Arbitrators, Inc., 127 West 30th Street, 9th Floor, New York, NY 10001. The publication is posted on our website and the subscription is free. To join our mailing list, please register your email address at https://www.smany.org.